



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 W. JACKSON BOULEVARD
CHICAGO, IL 60604-3590**

**REPLY TO THE ATTENTION OF:
DW-8J**

April 23, 2001

Ms. Sandy Helms
Bradley University
1501 West Bradley Ave.
Morgan Hall 205
Peoria, IL 61625

Dear Ms. Helms:

This is in response to your inquiry regarding the potential liability of donating computer and other electronic equipment. Our response below briefly addresses potential liability under two different environmental statutes, namely the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), more commonly known as Superfund, 42 U.S.C. § 6901 et seq. For a more complete summary of issues, or more precise application of the facts in your situation to the law, you should consider consulting your own attorney.

Potential RCRA Liability

In general, RCRA addresses the proper management of waste material. Therefore, the applicability of RCRA rules and liability is critically dependent on whether or not a waste has been generated. A working monitor, CPU, or other computer peripheral equipment considered obsolete by one user may be adequate for another user. In some cases, even non-working equipment may be repaired and returned to its original use. Usable or repairable equipment which is sent back to manufacturers or retailers or to other entities for resale or donation is not solid waste and therefore is not subject to RCRA regulations or RCRA-related liability.

When donating equipment, one important factor to consider is that all equipment is in working order (or can be repaired by the entity accepting the equipment) and that the organization accepting the donation plans to facilitate the return of the equipment to its original intended use. As long as these conditions are met, the donating organization is not generating a waste and is not subject to RCRA.

Potential CERCLA Liability

In general, CERCLA addresses the remediation of sites that have been contaminated by hazardous substances. Of critical importance in determining liability for "arrangement" for disposal under CERCLA is the source of the hazardous substances that are contributing to the release and the individuals or organizations that were responsible for those products and/or substances. Case law indicates that if the arrangement involves the sale of a new useful product containing a hazardous

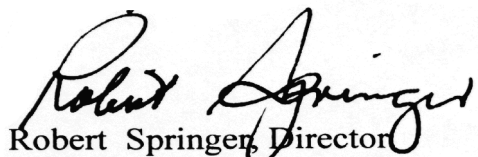
substance, as opposed to the sale of a substance merely to dispose of it, CERCLA liability may not attach. [See United States v. Maryland Sand, Gravel and Stone Co., 1994 WL 541069, at *4 (D. Md. Aug. 12, 1994)]. In addition, courts have refused to impose CERCLA liability if a party merely sells a product containing a hazardous substance, without additional evidence that the transaction involved an arrangement for the ultimate disposal of the substance. [See United States v. Maryland Sand, Gravel and Stone Co., 1994 WL 541069, at *4; Florida Power & Light Co. V. Allis Chalmers Corp., 893 F.3d 1313, 1317 (11th Cir. 1990); G.J. Leasing Co., Inc. v. Union Elec. Co., 854 F.Supp. 539, 560 (S.D. Ill. 1994); Branch Metal Processing, Inc. v. Boston Edison Co., 952 F.Supp. 893 (D. R.I. 1996)]. Where the seller is not primarily motivated to dispose of hazardous substances, courts have declined to impose liability. (See G.J. Leasing Co., Inc., 854 F.Supp. at 560). The stated reason for the sale, the purchase price and the condition of the property are relevant in determining the seller's motive. (See G.J. Leasing Co., Inc., 854 F.Supp. at 560). Furthermore, courts have stated it is the obligation to exercise control over hazardous waste disposal and not the mere ability or opportunity to control the disposal of hazardous substances that makes an entity an arranger under CERCLA. [See G.J. Leasing Co., Inc., 854 F.Supp. at 560; Geraghty and Miller, Inc. V. Conoco, Inc., 234 F.3d 917, 929 (5th Cir. 2000), *rehearing denied*]. While this case law addresses the sale of materials that contain hazardous substances, it provides some insight into donation. An organization donating electronic equipment for subsequent use with no additional evidence that the transaction involved an arrangement for the disposal of the equipment, could anticipate a similar interpretation. Please be aware that these interpretations are made by the court on a case-by-case basis.

Some reuse organizations offer a final report on the disposition of all materials received. This can be used by the donating organization to verify that each piece of equipment was sent for reuse. In light of the above discussion, this type of document may be of value.

The U.S. EPA Region 5 works closely with our state partners on waste related issues. I would recommend that you contact Mr. Sam Albasha with the Illinois Department of Commerce and Community Affairs for information on Illinois' program to promote the reuse and recycling of electronic equipment. Mr. Albasha can be reached at (217) 524-1613. Mr. Mark Crites, with the Illinois EPA, would be able to describe Illinois-specific regulatory issues. Mr. Crites can be reached at (217) 524-3269.

The U.S. EPA strongly supports the reuse of electronic equipment. I hope this information regarding liability is helpful. Please contact Susan Mooney of my staff if you have additional questions.

Sincerely,


Robert Springer, Director
Waste, Pesticides and Toxics Division